



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

The Honorable L. M. Brazier
Rains County Attorney
100 Quitman Street
Emory, Texas 75440

Letter Opinion No. 96-035

Re: Whether a county commissioners court is authorized under Local Government Code section 381.001(f) to donate county tax funds to a nonprofit organization whose purpose is to assist industrial development (RQ-852)

Dear Mr. Brazier:

You ask whether a county commissioners court is authorized to donate county tax funds to a nonprofit organization whose purpose is to assist industrial development. You state that Rains County has a county industrial commission and ask whether the donation is authorized by section 381.001(f) of the Local Government Code.

Section 381.001 authorizes the county judge of a county to appoint a county industrial commission. Subsection (f) provides that "[t]he commission shall investigate and undertake ways of promoting the prosperous development of business, industry, and commerce in the county. The commission shall promote the location and development of new businesses and industries in the county and the maintenance and expansion of existing businesses." Article III, section 52 of the Texas Constitution is also relevant:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county . . . of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

You appear concerned that section 381.001 of the Local Government Code does not authorize the county to donate county tax funds to a nonprofit organization whose purpose is to assist industrial development, perhaps because section 381.001(f) does not appear to authorize a county, as opposed to a county industrial commission, to promote economic development. We do not reach your statutory question, however, because we conclude that the Texas Constitution precludes the county from making donations of any sort.

In Attorney General Opinion H-397, this office concluded that article III, section 52 of the Texas Constitution prohibits a county from paying dues to a chamber of commerce. Attorney General Opinion H-397 (1974) at 2. We construe Attorney General Opinion H-397 to interpret article III, section 52 to prohibit political subdivisions such as

counties from making outright gifts and donations to private entities. *See Kordus v. City of Garland*, 561 S.W.2d 260, 261 n.1 (Tex. App.—Tyler, 1978, writ ref'd n.r.e.) (holding that Texas Constitution prohibits city from making donations and gifts to private corporations) (citing Attorney General Opinion H-397 (1974) with approval).¹

Article III, section 52-a, adopted in 1987, makes certain exceptions to section 52, providing in pertinent part as follows:

Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purposes, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

In Attorney General Opinion JM-1227, this office concluded that section 52-a was intended to create exceptions to pre-existing constitutional prohibitions on the lending of public credit by political subdivisions, but also concluded that it “does not itself expand the authority of [political subdivisions] to lend credit; it merely authorizes the legislature to do so. Consequently, enabling legislation would be necessary to authorize the transaction in question.” Attorney General Opinion JM-1227 (1990) at 2.


¹Political subdivisions may transfer public funds to private corporations under certain circumstances without running afoul of this constitutional prohibition. As one court has noted in a case involving the transfer of county funds to a private nonprofit corporation, article III, section 52 does not prohibit all such transfers but rather requires that they serve a public purpose and that “to insure that the political subdivision receives its consideration, viz., accomplishment of the public purpose, the political subdivision must retain some degree of control over the performance of the contract.” *Key v. Commissioners Court*, 727 S.W.2d 667, 669 (Tex. App.—Texarkana, 1987, no writ) (quoting Mike Willatt, *Constitutional Restrictions on Use of Public Money and Public Credit*, 38 TEX. B.J. 413, 422 (1975)). All transfers of county funds or property to a private entity must satisfy this constitutional test. In Attorney General Opinion JM-516, for example, this office concluded that a county may contract for industrial development services with a private corporation under certain conditions, that is, that the contract serve a public purpose and provide sufficient assurance that the public purposes will be accomplished, and that the county receive adequate consideration. Attorney General Opinion JM-516 (1986) at 2. Although this office has on occasion stated that certain types of “donations” are permissible under article III, section 52, the use of the term “donation” in connection with such expenditures is a misnomer. *See, e.g.*, Attorney General Opinion DM-268 (1993) at 3 (concluding that county “donation” of salvage or surplus property to private organization will not run afoul of article III, section 52 if it serves public purpose and is accompanied by adequate consideration); Letter Opinion 94-008 (1994) at 4 (home rule city may “donate” public money to private nonprofit corporation provided that city determines that expenditure serves a legitimate public purpose and places sufficient controls on transaction to ensure that public purpose will be carried out).

The statutory predecessor to section 381.001 of the Local Government Code was first enacted in 1971. Act of May 26, 1971, 62d Leg., R.S., ch. 975, § 1, 1971 Tex. Gen. Laws 2947, 2947-48. Although section 381.001 was codified in 1987 as part of a nonsubstantive codification, Act of May 1, 1987, 70th Leg., R.S., ch. 149, §§ 1, 51, 1987 Tex. Gen. Laws 707, 1308, it has not been substantively amended since before 1987. We conclude that section 381.001 is not intended as an enabling law under section 52-a. *Cf.* Attorney General Opinion DM-185 (1992) (concluding that Local Gov't Code § 380.001, enacted in 1989, is intended to authorize cities to undertake activities permitted by Tex. Const. art. III, § 52-a).² Therefore, even assuming that section 381.001(f) could be construed to authorize a county, as opposed to a county industrial commission, to promote economic development, we believe that any action undertaken pursuant to section 381.001(f) is subject to the strictures of article III, section 52. Thus, in answer to your query, article III, section 52 of the Texas Constitution prohibits a county commissioners court from making outright gifts or donations of any sort pursuant to section 381.001(f), including a donation of county tax funds to a nonprofit organization whose purpose is to assist industrial development.³

S U M M A R Y

Article III, section 52 of the Texas Constitution prohibits a county commissioners court from making a donation of county tax funds pursuant to Local Government Code section 381.001(f) to a nonprofit organization whose purpose is to assist industrial development.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

²You ask only about Local Government Code section 381.001(f). You do not ask about Local Government Code section 381.004. Therefore, we do not address whether section 381.004 was enacted in order to implement article III, section 52-a of the Texas Constitution, see Attorney General Opinion DM-185 (1992) at 4-5 n.2, or whether section 381.004 authorizes the county expenditure you describe.

³Article III, section 52, however, does not prohibit a county from transferring county funds to a private entity provided that the expenditure serves a public purpose, that the county receives adequate consideration, and that there are sufficient controls to ensure that the public purpose will be accomplished. While it might be possible to insure sufficient controls without a formal contract, the ordinary and most prudent method of establishing such enforceable controls would be by contract.